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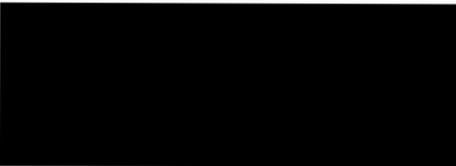
FILE: Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: SEP 17 2009
CDJ 2004 730 904

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a 26-year-old native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and child in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated June 5, 2006. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband. *See Form I-290B, Notice of Appeal*, dated July 18, 2006.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they were married on December 26, 2002, in Texas; a birth certificate for the couple's daughter [REDACTED] photographs of the couple and their daughter; three letters from the applicant's husband; a letter from the applicant; a letter from the applicant's step-son; medical records for the couple's daughter; tax records and other financial documents; supportive letters from co-workers and friends; proof of medical insurance coverage; employee warning notices; a letter from the applicant's husband's doctor, and a brief in support of the appeal. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9)(B) of the Act provides:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in or around August, 2001. *See Form I-601, Application for Waiver of Ground of Excludability; Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on February 18, 2003, and USCIS approved the petition on July 27, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in July, 2005. *See Form I-601, supra*. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly

¹ The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (*per curiam*) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 44-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for* [REDACTED]. The applicant and her husband have been married for almost seven years. *See Marriage Certificate*. The couple’s daughter was born in 2004, *see Birth Certificate for* [REDACTED] and she resides in Mexico with the applicant, *see Letter from* [REDACTED]. The applicant’s spouse asserts that he is suffering extreme emotional and financial hardships as a result of the separation from his wife and child.

In support of the emotional hardship claim, the applicant’s husband states that he loves his wife and daughter, and that “being separate from [his] family has been very painful [because they] were a very happy family.” *Letter from* [REDACTED] Mr. [REDACTED] notes the difficulty of going “to an

empty home after work,” and the pain of missing his young daughter as she grows up. *Id.* The couple claims that the separation has been especially difficult given their daughter’s repeated illnesses. The record reflects that the applicant’s daughter had an episode of viral meningitis as an infant, and that she is “at risk for developmental delay and hearing difficulties” as a result. *See Letter from MD Pediatric Associates.* The couple sought medical attention for [REDACTED], including hospitalization, on a number of occasions in 2005 and 2006. *See Medical Records for [REDACTED]* Although the applicant’s daughter has been able to obtain medical care in Mexico, the applicant states that “to see a doctor we have to travel two hours and a half and at times we cannot find him.” *Letter from [REDACTED]*. In the United States, [REDACTED] would be covered by [REDACTED] employer-provided medical insurance. *See Blue Cross Blue Shield Member Listing.* Although harm to the applicant’s child is not calculated in the extreme hardship analysis, *see* 8 U.S.C. § 1182(a)(9)(B), this harm is relevant given the impact on [REDACTED]

claims that the stress from the separation from his wife and child, as well as the financial pressures, has impacted his ability to perform at work. *See Letter from [REDACTED]* Mr. [REDACTED] has worked for the same company for 17 years, rising to the position of assistant crew foreman. *See Letter from [REDACTED]* Vinylex Corporation. The record reflects that in 2006, [REDACTED] was counseled regarding attitude and behavior problems at work. *See First Employee Warning*, dated Apr. 20, 2006 (noting [REDACTED]’s rudeness to another employee). On June 5, 2006, [REDACTED] was given a second warning based on an argument with a subordinate. *See Second Employee Warning.* The employer noted that [REDACTED] “needs to control his temper more,” and “considering his job title he cannot be upset so quickly.” *Id.* [REDACTED]’s co-workers have also noticed the negative change in his attitude at work. A co-worker who has known [REDACTED] for 14 years notes that he “loses his temper quicker, has argued with other co-workers, and he has a hard time concentrating on his job.” *Letter from [REDACTED]*, dated July 14, 2006. Another co-worker who has known [REDACTED] since 1992 noticed a growing concern with [REDACTED] “demeanor and performance at work.” *Letter from [REDACTED]* Mr. [REDACTED] states that he has been counseled regarding “problems due to [his] lack of concentration” at work, and that he fears losing his “job and all that [he] has accomplished due to the situation [they] are in.” *Letter from [REDACTED]*

In addition to the psychological impact of family separation, the applicant’s husband contends that he has suffered extreme financial hardship as a result of the denial of the waiver. *See id.* Mr. [REDACTED] contends that the separation “has generated a big financial debt as [he has] to pay for all of [their] expenses . . . in the United States from mortgage, insurance, car payments and child support for [his] son [REDACTED]” *Id.* Additionally, he must pay for the applicant’s rent and his daughter’s medical bills in Mexico. *Id.* The record contains an amended tax return from 2005, indicating an adjusted gross income of \$43,217.00. *See IRS Form 1040X for 2005.* The record also reflects an outstanding mortgage of \$100,614.00; an auto loan for \$15,084.00, and additional debt of over \$48,000. *See Financial Records.* Mr. [REDACTED] divorce decree includes his child support obligation in the amount of \$305 per month, and the decree indicates that he is responsible for his son’s health insurance. *See Agreed Final Decree of Divorce* at 18 and 20; *see also Blue Cross Blue Shield Member Listing* (showing coverage for [REDACTED]). Mr. [REDACTED] travel to and from Mexico adds to the financial hardships. *See Letter from [REDACTED]*

In sum, the applicant's spouse has provided evidentiary support for his contention that he faces extreme psychological and financial hardships without the presence of his wife and daughter in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation).

The applicant's spouse also has provided evidence that he would suffer extreme hardship if he were to relocate to Mexico to live with his wife and child. The applicant's husband contends that it would be impossible for him to move to Mexico because of the lack of jobs and high unemployment rate in the country. *See Brief in Support of Appeal*. Mr. [REDACTED] states that he left Mexico for the United States at the age of 15, "due to the extreme poverty we lived in Mexico, and in order to help them financially." *Letter from [REDACTED]*. Since that time, his "life has been to work and work in order to get ahead in life." *Id.* Mr. [REDACTED] became a citizen of the United States because "it is with justice for all and full of opportunities for all hard working and honest people." *Id.* Mr. [REDACTED] has a long history of employment with Vinylex Corporation, and he holds a position of responsibility as assistant crew foreman. *See Letter from [REDACTED]*, *supra* (noting full time employment since July 6, 1992). Mr. [REDACTED] has employer provided medical and life insurance, which would be lost upon relocation. *See Blue Cross Blue Shield Member Listing; see also MetLife Beneficiary Designation Form*. Relocation to Mexico would also cause Mr. [REDACTED] separation from his son from his first marriage. Mr. [REDACTED] states that even though [REDACTED] lives with his mother, they "see each other every day" and he is "very proud of him." *Letter from [REDACTED]*; *see also Letter from [REDACTED]*

Based on the applicant's spouse's evidence of psychological and financial hardship to himself as a result of family separation, and his long residence, work history and family ties in the United States, the AAO finds that the applicant's spouse has established extreme hardship if the applicant is prohibited from entering in the United States, or if he leaves the United States to be with his family. Although the relevant factors may not be extreme in themselves, the entire range of factors considered in the aggregate, takes the case beyond those hardships ordinarily associated with removal, such as economic detriment due to job loss or the efforts ordinarily required in relocation, and supports a finding of extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of Coelho*, 20 I&N Dec. 464, 467 (BIA 1992). The adverse factors in this case are her initial entry without inspection and the unlawful presence for which the applicant seeks a waiver. The favorable and mitigating factors in this case include: the applicant's significant ties to her U.S. citizen spouse in the United States; the applicant's lack of a criminal record; and the extreme hardship to the applicant, the applicant's spouse, and the couple's daughter, if she were denied a waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301 (setting forth relevant factors).

The AAO finds that although the immigration violations committed by the applicant are serious, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.